



T20 Policy Brief

Task Force 06

STRENGTHENING MULTILATERALISM AND GLOBAL GOVERNANCE

Reinventing the WTO

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Abstract

The multilateral trading system faces more challenges than ever in its eight-decade history. Therefore, restoring WTO's credibility as a negotiation platform is urgent. Although less developed members eventually converge on development standards, WTO has historically pursued trade regulation convergence. The welfare-enhancing aspect of trade is recognized by all members, but trade openness is subject to political convenience; therefore, regulatory convergence is not always achievable. The WTO must adapt to changing economic, social, political, and technical realities while maintaining its regulatory and market access mandate. Rewriting, tightening, or entering additional regulatory fields may be needed for existing agreements. The weak negotiating mandate of WTO has blocked several systemic concerns like decision making, transparency, dispute settlement, subsidies, and climate change.

Brazil's G20 presidency is a platform for governments to onboard the key members and propose a WTO reform resolution to avoid delaying critical decisions that affect most developing countries.

Keywords: WTO, International Trade, Regulation, Reforms, Negotiations, Agreements



Diagnosis of the issue

The present worldwide trading system, previously commended as a triumphant illustration of multilateralism, today seems to be trapped within an outdated governance structure. A fresh agenda is necessary to surmount barriers and address the urgent and extensive challenges of the twenty-first century. A challenge encountered by the World Trade Organization (WTO) is deciding on the most suitable strategy to launch a reform effort, considering the existence of significantly different factions that must be brought to a consensus. Recently, numerous negotiations and partnerships at the WTO have been hindered or failed because different countries' divergent interests could not reach a consensus. Owing to geopolitics and other factors, the dynamics of trade are currently undergoing massive fluctuations. Nations are increasingly gravitating towards accords or alliances that involve little participation from the WTO, or put simply, countries are now shifting away from multilateral trading system. Recently, the WTO has faced a legitimacy crisis due to several external factors also, including trade disputes, the Covid 19 pandemic, and conflicts between nations.

Since its establishment as a finance forum in 1999 and its emergence as the largest group of economies in 2008, the G20 has faced increasingly intricate, interwoven, and disruptive global concerns within the trade system. The majority of the countries in the G20 come from the developing regions of the world. It is crucial for the WTO to consider rules that are fair and just for developing nations and the global South during its reforms. The Brazil Presidency presents a favorable circumstance for developing nations in the Global South, including Brazil and India, who are members of the G20 group. This opportunity arises from a lack of leadership from the United States of America, allowing these nations to advocate for equitable reforms that benefit the Global South. The Global



South comprises developing and emerging economies that require fairness to thrive. As the Deputy Director General of the WTO emphasized, these reforms should prioritize trade that is resilient, sustainable, and inclusive.

As the WTO's role in global commerce has waned, its reforms have broadened to cover many areas. Operational transparency and fair access to wealthy nations' markets, which sometimes impose non-tariff barriers or measures to hamper exports from developing countries, are among the many difficulties. Decision-making transparency, climate change restrictions, labor standards, and data privacy laws are also needed. The WTO's Dispute Settlement mechanism needs urgent change since President Donald Trump's Presidency, the US administration has blocked the nomination of new judges to the appellate court, citing national interests and judicial activism. This obstacle has considerably weakened the WTO in today's global environment.

Reforms could restore multilateral trading system operations. Reforms should use WTO advances to increase stakeholder engagement in committee sessions, including firms, regulators, and other international organizations. Economies are affected differently by different policies. In the Special and Differential Treatment provision, several developed nations want precise criteria and constraints for distinguishing emerging and industrialized states. They accuse emerging nations like India, China, and Brazil of unilaterally establishing their development status under Special and Differential Treatment. Developing economies like China, India, South Africa, Venezuela, Laos, Bolivia, Kenya, Cuba, Central African Republic, and Pakistan responded collectively in 2019. According to the response, capacity constraint remains a serious issue for developing WTO members, since they lack human resources, bargaining abilities, and intergovernmental coordination mechanisms in trade negotiations. These shortcomings hinder developing Members' ability to negotiate and implement agreed solutions for



domestic economic expansion.

Recommendations

(A) General reforms in WTO

A synergistic model for advancing WTO reform

The synergistic WTO reform will combine multilateral cooperation, streamlined decision-making, and flexible policy instruments. First and foremost, WTO members should be reminded of its core principles: Most Favored Nation (MFN), Non-Discriminatory Treatment, Open Borders, and Transparent decision making. WTO negotiations are founded on a single undertaking principle of absolute collective and comprehensive decision making. It implies that nothing is decided until everything is accepted by every member. While the purpose of such provision was to ensure sovereignty of members, this has hindered negotiation rather than helping any member. The first solution is to use the opt in and opt out feature, which allows WTO members to choose agreements that suit their economy's development and opt out of those that harm their regional economy. Chapter VII of the Sutherland Report proposes a Variable Geometry technique as an alternative to consensus-based decision making. This paradigm maintains a cohesive institutional structure while allowing diverse participation based on abilities. The variable geometry model in the EU implies that the European Economic Community, Schengen Agreement, and single currency should have varied degrees of integration implying that not all countries must integrate fully.

Revitalizing the Dispute Settlement Mechanism (DSM)

The 1995 WTO-DSM was a major victory of the Uruguay round of trade negotiations.



Several aspects of the DSM are unique. Parties must participate under compulsory jurisdiction. It also mandates pre-litigation sessions to resolve disputes before filing a complaint. A higher body evaluates lower body decisions in appellate review. It also has strict procedure time limits to resolve problems quickly. The system also monitors and enforces rulings.

The WTO's Appellate Body (AB) has been in crisis since Donald Trump's presidency, when the US blocked the appointment of judges to the body so that it could make policies that violate WTO principles without appellate reviews. After the change in presidency, the Biden Administration continues to reject any effort to overhaul the Dispute Settlement Body by citing judicial activism and unfavorable system.

Multilateral trading system's integrity depends on a functioning dispute settlement for numerous reasons as everyone benefits from playing by the rules. Firstly, emerging economy members can defend their rights. Second, Member countries can appeal in WTO ad hoc panel rulings. Third, The WTO cannot appeal panel verdicts without three judges. Divergent panel reports could confuse WTO rules; thus, security and predictability are crucial. Fourth, the AB corrected almost 80% of panel appeals. Fifth, protracted conflict settlement may push member nations to act alone.

For the global South to benefit from multilateralism and expand their trade share, the DSM must be revived. One proposal to reinvigorate DSM is impartial third-party adjudication of trade disputes, free from political pressure by member states. Ambassador David Walker (from New Zealand), appointed by the WTO General Council Chair as a 'facilitator' with a mandate to explore resolution of a number of issues raised by the USA in October 2019, proposed the Walker Principles, which included reforms like respecting DSU's 90-day limit on issuing reports, not reviewing domestic laws of members, and Appellate Body's conclusions. Jennifer Hillman, a former Appellate Body member,



suggested a separate DSM for tariffs, anti-dumping, and other trade remedy decisions due to the USA's growing number of trade remedy complaints. The final report suggests that the General Council appoint Appellate Body members by majority vote instead of full consensus.

Strengthening the administrative support capabilities of the Secretariat

The Secretariat is crucial for the organization's monitoring and negotiating tasks to work effectively. Tracking trade policy changes is essential for transparency. The Secretariat should regularly engage with the private sector to gain real world business insights and should try to incorporate those in WTO agreements and rules so that they are implemented, reflecting the changing dynamics of trade. Secretariat provides trade statistics that should be accessible to enable transparent and evidence-based conversations on trade matters with the wider trading community. The Secretariat should be granted the opportunity to assume a more proactive role in supporting members during their negotiating processes.

(B) Specific trade issues reforms.

Special and Differential Treatment (S&DT)

S&DT gives many developing countries a sense of equality and confidence, enabling them to participate in global governance. The WTO Agreements on Agriculture, Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Trade Related Investment Measures (TRIMS), TRIPS, and Subsidies and Countervailing Measures include these provisions. Due to nations' self-declaration rights as developing nations, USA and its allies have pushed to weaken S&DT since the Trump presidency. The claim that some developing countries have surpassed early trading nations in the high-income



country group in global trade ignores per capita income disparities and large developing countries' vulnerabilities. Since the Havana agreement, these provisions have been crucial to multilateral trade legislation since 1947 Charter. Thus, true S&DT would mean rejecting global partnership through history. An independent panel should evaluate rising countries' policies and S&DT advantages. If a country's industry has grown internationally competitive and the infant industry argument does not apply, they should remove S&DT. Instead of forcing developing countries to eliminate the provision, a case-by-case study is needed.

Services, Digital Trade and E commerce

Digital trading has transformed international trade. Trade now increasingly includes digital services, internet transactions, and data flows in addition to physical goods. The exponential rise of e-commerce has presented new challenges to the WTO and global trade framework. In recent years, wealthy nations have pushed for a WTO e-commerce law, and 90 Members now endorse the Joint Statement Initiative. India, the voice of developing nations at the WTO, has led the charge against extending the customs duties moratorium on e-commerce for developing and least developed nations beyond March 31. This prohibition costs India and other emerging economies revenue and hinders digital industrialization. Since the aim is to liberalize the digital trade sector and increase their trade share, developed nations want this bill to pass at WTO. They must understand that forced bill implementation without proper protections might ruin small firms and MSME companies in emerging nations and reduce tariff income. The WTO must negotiate this e-commerce measure to regain its credibility as the principal multilateral trade framework institution. Negotiations must be balanced to account for countries' development levels, and case-by-case flexibility should promote inclusive trade. Transparent norms should be



notified for cross-border data transfers and data governance. Sustainable and inclusive economic growth can be achieved by aligning the e-commerce law with UN Sustainable Development Goals.

Fostering Momentum Among WTO Members to Accelerate Talks on Emerging Issues for Sustained Relevance

Besides the provisions of S&DT rules for developing states, other topics are crucial to multilateral trade system governance. In the absence of a multilateral structure, bilateral and regional agreements have addressed some of these concerns, but they affect most WTO members because economies are intertwined and connected in a globalized world, where any exogenous shock in one economy can have ripple effects across economies.

Trade and environment, including carbon emissions and carbon border adjustments, Investment facilitation for Development, revisiting the fisheries subsidies agreement, and competitive neutrality, including prohibiting discriminatory industry policies and transparent support for state owned enterprises are some of the issues which require a fair and urgent discussion among WTO members.

G20 countries should pragmatically set the route and principles for WTO reforms by initiating fair and constructive discussions about these issues. Reaching a G20 consensus on a strategic course of action will enable transparent and inclusive WTO membership involvement. WTO members can resolve issues better through multilateral agreements than regional or bilateral ones.

Scenario of outcomes

(i) Persistent Divide: Developed Nations Resistance to Cooperation Amplifies WTO's Institutional Crisis

One of the Outcomes of these proposals can be the one at the extreme end. Most of the time, the official communication from the high income developed economies on any agreement or a proposal is led by the USA. The odds are high that many of the agreements or proposals which can benefit developing nations can be blocked by the developed economies and the institutional crisis of WTO can continue. If there are roadblocks that are created by these developed nations over the issues discussed in this policy brief, the crisis of WTO will worsen and the world shifts away from multilateral trade towards bilateral, trilateral, or regional trade frameworks. If Regional Trade agreements and Bilateral Trade agreements see a spike, the significance of WTO as an institution will dwindle further signaling its eventual demise as a relevant global institution.

(ii) Trade Dynamics: Growing Consensus Between Developed and Developing Nations

If the developed and developing economies reach a balance on the points above to find even a partial common ground among member States, WTO can be revitalized as a multilateral trading system. As numerous economic theories argue, economic growth prospects usually involve trade-offs with mutual gains and losses. However, any member aiming for complete gains and no losses depicts lack of respect towards the other member states.

The first sub outcome can occur if developed member states agree to S&DT provisions and emerging economies that are also G20 members must agree on the e-commerce bill

and investment facilitation agreement, which can lead to foreign competition for domestic producers and harm developing nation's domestic industries without adequate safeguards. Positively, developing nations will have a level playing field in global commerce. High-income developed economies will have more transparency and information, allowing them to make better and more informed decisions when investing in emerging economies and G20 nations, which will benefit their returns on investment and domestic businesses.



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